

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #3	CCRB Case #: 201704687	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/08/2017 6:10 PM	Location of Incident: § 87(2)(b)	Precinct: 79	18 Mo. SOL 12/8/2018	EO SOL 12/8/2018	
Date/Time CV Reported Fri, 06/09/2017 12:20 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 06/09/2017 12:20 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Gerard Fenton	06680	951725	077 PCT
3. DTS Andrew Burrafato	4138	932384	ESS 09
4. POF Stephanie Perez	15766	961095	079 PCT
5. An officer			
6. DTS Matthew Sproul	07958	907384	ESS 08

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Noah Molina	4247	930753	ESS 07
2. POM Daniel Garcia	20856	948030	ESS 07
3. SGT Stephen Volpe	4757	939667	084 PCT
4. DTS John Sylvestre	00242	931290	ESS 07
5. DTS Fredrick Moreira	05029	916274	ESS 08
6. LSA Barry Duignan	00000	903851	E S U
7. DTS Slawomir Dziubek	4183	938417	ESS 08

Officer(s)	Allegation	Investigator Recommendation
A.POM Gerard Fenton	Abuse: Police Officer Gerard Fenton searched § 87(2)(b) in Brooklyn.	
B. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b) and § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
C.DTS Matthew Sproul	Discourtesy: Detective Matthew Sproul spoke discourteously to § 87(2)(b)	
D.DTS Matthew Sproul	Discourtesy: Detective Matthew Sproul spoke discourteously to § 87(2)(b)	
E.DTS Andrew Burrafato	Discourtesy: Detective Andrew Burrafato spoke discourteously to § 87(2)(b)	
F. Officers	Abuse: Officers frisked § 87(2)(b)	
G. Officers	Abuse: Officers searched § 87(2)(b)	
H.DTS Andrew Burrafato	Abuse: Detective Andrew Burrafato refused to provide his name and shield number to § 87(2)(b)	
I. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	
J.POF Stephanie Perez	Abuse: Police Officer Stephanie Perez frisked § 87(2)(b)	
K.POF Stephanie Perez	Abuse: Police Officer Stephanie Perez searched § 87(2)(b)	
L. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
M. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB, via the online website, on June 9, 2018. Video footage was not available for this incident.

On June 8, 2018, at approximately 6 p.m., PO Gerard Fenton of the 79th Precinct, other officers from the 79th Precinct, and ESU officers executed a search warrant at a barbershop located at § 87(2)(b) in Brooklyn (**Allegation A: Abuse of Authority**, § 87(2)(g), § 87(2)(b) and § 87(2)(b) were in the front area of the barbershop. There were other individuals in a backroom area of the barbershop as well. As officers entered the premises, they allegedly told the people inside of the barbershop to “get the fuck down” (**Allegation B: Discourtesy**, § 87(2)(g)). While on the floor, § 87(2)(b) asked if she could sit up due to a health condition, after which Det. Matthew Sproul of ESU allegedly told her to “shut the fuck up” multiple times (**Allegation C: Discourtesy, miscellaneous** – § 87(2)(g)). As § 87(2)(b) was in the process of getting down on the floor, he told Det. Sproul that he was going to sue the officers, to which Det. Sproul allegedly responded, “We are doing our fucking job” (**Allegation D: Discourtesy, miscellaneous** – § 87(2)(g)). Approximately five minutes after officers initially entered, Det. Andrew Burrafato of ESU interacted with § 87(2)(b) and allegedly stated to him, “Don’t fucking move. What do you have? Don’t be fidgety” (**Allegation E: Discourtesy**, § 87(2)(g)). Two different officers also allegedly frisked § 87(2)(b) and entered his pockets (**Allegation F: Abuse of Authority**, § 87(2)(g), **Allegation G: Abuse of Authority**, § 87(2)(g)). During this time, § 87(2)(b) requested Det. Andrew Burrafato’s name and shield, but the officer did not provide the information (**Allegation H: Abuse of Authority**, § 87(2)(g)). At some point, an officer also allegedly stepped on § 87(2)(b)’s cellphone and damaged it (**Allegation I: Abuse of Authority**, § 87(2)(g)).

The other individuals who were apprehended in the back area were then brought into the front area of the barbershop. PO Stephanie Perez, of the 79th Precinct, then entered the barbershop, frisked § 87(2)(b) and then allegedly entered her two front pockets (**Allegation J: Abuse of Authority**, § 87(2)(g), **Allegation K: Abuse of Authority**, § 87(2)(g)). After the search of the premises had been conducted an officer allegedly approached § 87(2)(b) and stated, “I’ll fuck you up” (**Allegation L: Discourtesy**, § 87(2)(g); **Allegation M: Abuse of Authority**, § 87(2)(g)).

Afterward, § 87(2)(b) and § 87(2)(b) were allowed to leave the barbershop, while the rest of the individuals were arrested for marijuana that was found inside the premises.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Gerald Fenton searched § 87(2)(b) in Brooklyn.

It is undisputed that on June 8, 2017, officers entered and searched a barbershop located at § 87(2)(b) in Brooklyn, pursuant to § 87(2)(b) County search warrant § 87(2)(b), which was issued to PO Fenton by the Honorable Judge § 87(2)(b) on § 87(2)(b). The warrant allowed officers to search for a firearm, ammunition, documents relating to the ownership and recent occupation of the locations, any safes or locked containers, any computer hardware, computer software, cellular phones, and any written record reflecting the passwords or encryption pass phrase used to secure or limit access to the computers or cellular phones. The

warrant also further commanded officers to search for the above-described property on a black male identified as § 87(2)(b) (BR 01).

§ 87(2)(g)

Allegation (B) – Discourtesy: Officers spoke discourteously to § 87(2)(b)

and § 87(2)(b)

Allegation (C) – Discourtesy: Detective Matthew Sproul spoke discourteously to § 87(2)(b)

Allegation (D) – Discourtesy: Detective Matthew Sproul spoke discourteously to § 87(2)(b)

Allegation (E) – Discourtesy: Detective Andrew Burrafato spoke discourteously to § 87(2)(b)

§ 87(2)(b) a customer in the barbershop, alleged that officers entered the barbershop with their guns drawn and stated, “Get the fuck down,” and announced that they were executing a search warrant. § 87(2)(b) complied and got on the floor. § 87(2)(b) did not provide any specificity regarding how many officers made the alleged discourteous statement, nor did she offer a physical description of the officers who made the alleged discourteous statement. After officers entered the barbershop, two officers stood outside the front door, one stood adjacent to the front door, and the rest of the officers proceeded to a back room in the barbershop. While on the floor, § 87(2)(b) complained to Det. Sproul that she had heart issues and asked if she could sit up multiple times. Det. Sproul allegedly responded by telling § 87(2)(b) to stay down and to “shut the fuck up,” multiple times.

§ 87(2)(b) a barber in the barbershop, alleged that an officer stated to § 87(2)(b) “Get down. Don’t fucking move. Put your hands up.” That same officer later told § 87(2)(b) “We are doing our fucking job,” after § 87(2)(b) stated that he was going to sue the NYPD. (Contact could not be established with § 87(2)(b) so he was not interviewed for this case.) § 87(2)(b) also alleged, on § 87(2)(b) behalf, that Det. Burrafato stated to § 87(2)(b) “Don’t fucking move. What do you have? Don’t be fidgety.” § 87(2)(b) provided a phone statement but was ultimately uncooperative in providing a verified statement to the CCRB. His phone statement was not consistent with the discourtesy alleged on his behalf by § 87(2)(b) (BR02).

Based on the ESU Warrant Execution Supplemental Report (BR 03), Det. Sproul was assigned to rear security and would have been guarding the barbershop’s door. Additionally, his pedigree information generally corresponds to the descriptions provided by § 87(2)(b) and § 87(2)(b) (BR 04). A search of CTS determined that Det. Sproul has retired from the NYPD.

All the ESU officers interviewed for this case denied that they, or any other officer, spoke discourteously to § 87(2)(b) or § 87(2)(b) upon entering the barbershop. Det. Burrafato also denied speaking discourteously to § 87(2)(b) and all the other officers interviewed did not hear any officer speak discourteously to § 87(2)(b)

§ 87(2)(g)

Det. Sproul was unable to be interviewed for this case as he no longer works for the NYPD, which was confirmed by a CTS search using Det. Sproul’s Tax ID and by ESU’s roll call.

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (H) – Abuse of Authority: Detective Andrew Burrafato refused to provide his name and shield number to § 87(2)(b)

Allegation (I) – Abuse of Authority: An officer damaged § 87(2)(b)'s property.

§ 87(2)(b) alleged that he requested Det. Burrafato's name as the officer was interacting with § 87(2)(b) and § 87(2)(b) but Det. Burrafato did not provide a response. § 87(2)(b) also alleged that, at some point during the incident, an officer inadvertently stepped on his phone and damaged it, but he could not provide any additional details regarding the property damage allegation or the officer's identity.

Det. Burrafato did not recall having any interactions with § 87(2)(b) or any other civilians, in the front area of the barbershop, and he denied that he refused to provide his name and shield number to any civilian. All the other officers interviewed for this case denied that any officer refused to provide their names or shield numbers to civilians. All the officers also denied stepping on a phone or damaging a phone.

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (F) – Abuse of Authority: Officers frisked § 87(2)(b)

Allegation (J) – Abuse of Authority: Police Officer Stephanie Perez frisked § 87(2)(b)

Allegation (G) – Abuse of Authority: Officers searched § 87(2)(b)

Allegation (K) – Abuse of Authority: Police Officer Stephanie Perez searched § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were not arrested during the incident.

§ 87(2)(b) alleged that after everyone had been secured, PO Perez entered the barbershop and patted down her front pants area, her front pockets, and patted down the area under her breasts. PO Perez also entered § 87(2)(b)'s front pockets, using a few of her fingers to feel around and flip open her pockets. § 87(2)(b) did not have anything in her pants' pockets at the time.

§ 87(2)(b) alleged, on § 87(2)(b) behalf, that an officer patted down § 87(2)(b) pockets underneath the barber cape that he was wearing at the time. § 87(2)(b) also believed that § 87(2)(b) pockets were searched during this time, but he was not certain. Later during the

incident, a different officer patted down and searched § 87(2)(b) a second time. (As noted above, § 87(2)(b) was uncooperative and did not provide a verified statement to the CCRB.)

PO Perez stated that after the search warrant was executed and the barbershop had been secured, an officer – who she could not identify – approached her outside of the premises and instructed her to stay with a female inside of the premises and to either frisk or search her. PO Perez did not have any knowledge of what had occurred inside the barbershop prior to entering. PO Perez patted down § 87(2)(b)'s waistband, torso, legs, and her pockets. PO Perez did not observe any bulges on § 87(2)(b). PO Perez indicated that she did not specifically recall if she entered § 87(2)(b)'s pockets, but acknowledged that she “probably did.” PO Perez also noted that it was standard procedure to frisk and search someone where a search warrant was executed. PO Perez did not speak with § 87(2)(b) and only interacted with her for two minutes.

Det. Moreira of ESU acknowledged that he patted down individuals for weapons, but he could not specifically recall who he patted down. Det. Moreira noted that it was “procedure” to conduct a pat down for weapons for the officers’ safety. Lt. Duignan of ESU did not have a specific recollection of this incident, however, he noted that frisking handcuffed individuals in the “grabbable areas” around the waistband is a regular practice during search warrant executions. A majority of the other ESU officers also indicated that it is procedure to pat down handcuffed individuals to ensure that they do not have any weapons when securing a location. All the ESU officers denied searching any individual inside of the location.

PO Fenton testified that he did reconnaissance at the target location a few days prior to the execution of the search warrant. PO Fenton believed that the weapon would be found in the back room of the establishment but was unsure where specifically in the back room it was supposed to be found. PO Fenton also noted that the door to the back area was not locked and individuals went freely between the front room and back room. There were no “customer only” or “employee only” signs present.

In *People v. Smith*, 164 A.D.2d 456 (1991), the courts determined that it was permissible to frisk individuals present at a private residence because the search warrant specifically noted that a gun was present at the location, that officers were permitted to search for it, and that officers were permitted to protect themselves from a reasonably perceived harm by frisking defendants for weapons (BR 06).

However, in *Ybarra v. Ill.*, 444 U.S. 85 (1979), which focused on the execution of a search warrant for narcotics in a public tavern, the court found that, unless pursuant to an arrest, it is impermissible to search a customer for weapons without probable cause that the individual is armed and dangerous. The standard is not satisfied by an individual’s mere presence where an authorized search of premises is taking place (BR 05).

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation (L) – Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation (M) – Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged in his phone statement that after the search of the barbershop was conducted, an officer approached him and stated, “You’re lucky. I’ll fuck you up” (BR 02). As noted above, § 87(2)(b) was uncooperative and did not provide a verified statement to the CCRB. None of the other civilians interviewed for this case corroborated § 87(2)(b) allegations.

All the officers interviewed for this case denied making any such statements to any of the civilians inside of the barbershop.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 07).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 08).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 09).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 10).
- PO Fenton has been a member-of-service for six years and has been a subject in six CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)
- Det. Burrafato has been a member-of-service for 15 years and has been a subject in eight CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)
- PO Perez has been a member-of-service for two years and this is the first CCRB complaint to which she has been a subject. § 87(2)(g)

- This case was unsuitable for mediation.
- As of August 31, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 11).
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____